

1 Department of Labor and Industry
2 Board of Personnel Appeals
3 PO Box 201503
4 Helena, MT 59620-1503
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8 STATE OF MONTANA
9 BEFORE THE BOARD OF PERSONNEL APPEALS

10
11 IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE 15-2014

12
13 PRYOR EDUCATION ASSOCIATION,)
14 MEA-MFT,)
15 Complainant,) INVESTIGATIVE REPORT
16 -vs-) AND
17) NOTICE OF INTENT TO DISMISS
18 PRYOR PUBLIC SCHOOL DISTRICTS)
19 2&3,)
20 Defendant.)
21)
22)
23)
24)

25 **I. Introduction**

26
27 On March 24, 2014, the Pryor Education Association (PEA) filed a complaint against the
28 Pryor Public Schools Districts 2 & 3 (PPS or District) alleging violations of Section 39-
29 31-401(1), (2) and (5), MCA, as well as violations of 39-31-201 and 39-31-305(1), MCA.
30 The charges were filed by Jeff Greenfield, MEA-MFT field consultant. Jeffrey Weldon,
31 attorney at law, responded on behalf of the District and denied that the District had
32 committed an unfair labor practice.
33

34
35 John Andrew was assigned to investigate the complaint and has reviewed the
36 submissions of the parties and has communicated with the parties in the course of
37 investigating the charge.
38

39 **II. Findings and Discussion**

40
41 The parties to this matter have a lengthy history of collective bargaining with the current
42 collective bargaining agreement in force until June 30, 2015. The District is a
43 participant in a program implemented by the Office of Public Instruction (OPI) commonly
44 referred to as Montana's Schools of Promise. The District has applied for, and
45 received, a School Improvement Grant (SIG) through the Schools of Promise program.
46 Included in the grant are teacher incentive systems which are an integral component of
47 the overall goal of improving student academic performance. The SIG program
48 anticipates a collaborative approach between management and teacher unions to
49 achieve its objectives. As part of the program the PEA and the District supplemented
50

1 their existing collective bargaining agreement with a Memorandum of Understanding
2 (MOU), the relevant portion of which appears below:
3

4 Memorandum of Understanding

5 This Memorandum of Understanding (MOU) entered into this 23rd day of August, 2013,
6 by and between the Board of Trustees, Pryor Public Schools, hereinafter called the
7 "Board" or "District" and the Pryor Education Association, hereinafter called the
8 "Association" or "PEA."
9

10 The MOU shall define the terms and conditions set forth using School Improvement
11 Grant (SIG) dollars as determined by the Office of Public Instruction (OPT). The MOU
12 will supersede any related contractual language contained in the Collective Bargaining
13 Agreement between the Association and the District.
14

15 This MOU shall sunset on June 30, 2014.
16

17 LABOR/MANAGEMENT LEADERSHIP TEAMS

- 18 1. A SIG Labor/Management Leadership Team shall be established. The Leadership
19 Team will make all decisions and resolve all issues related to the SIG guidelines
20 that encompass labor issues and working conditions.
- 21 2. The District shall appoint four members and the Association shall appoint four
22 members to the Labor/Management Leadership Team.
- 23 3. The Labor/Management Team shall develop group and/or individual rewards for
24 teachers that may be earned by demonstrated classroom or school-wide
25 improvement in student achievement, school attendance, and/or high school
26 graduation rates. These rewards shall be established by December 31, 2013.
27

28 Two portions of this MOU are at the heart of this dispute. One portion is the language that the
29 MOU will supersede related contractual language in the bargaining agreement, and the other is
30 the language defining the role and objective of the SIG Labor/ Management Leadership Team
31 (L/MT) with the composition and number of representatives to the same not being an issue.
32

33 Essentially, the L/MT is charged with determining things that will carry out the objectives of the
34 SIG program consistent with the standards put in place by OPI. The L/MT periodically meets to
35 discuss and vote on proposals that will accomplish these objectives. Minutes are taken of these
36 meetings. Actions approved by the L/MT are not subject to review by the Board of Trustees of
37 PPS.
38

39 As part of its oversight role, OPI has in place a SIG Central Team (Central Team). That team is
40 comprised entirely of employees of OPI. Its role is to approve SIG requests from schools. In the
41 case of requests involving teacher pay, such requests are first approved by the L/MT prior to
42 Central Team approval. Approval by the Central Team then means that funds committed to the
43 program can be used to carry out the L/MT decisions. It also means they are consistent with SIG
44 guidelines. Approval by the Board of Trustees is not needed for these funds to be expended, nor
45 does the Board of Trustees have the ability to deny decisions made by L/MT and approved by
46 the Central Team.
47
48
49
50

1 All this leads to the root of this dispute. In early January of 2014 the L/MT met and considered
2 payment of what the minutes of the L/MT refer to as a “retention bonus.” The bonus in the
3 amount of \$2,000 was to be paid to each non-tenured teacher who returned to the District in the
4 subsequent school year. When the PEA learned of this proposal they stated to the District a need
5 to bargain the matter, as bonuses (in their view, and correctly so) are mandatory subjects of
6 bargaining. At some point in time unclear to the investigator, the issue went back to the L/MT
7 for further consideration with the idea then being proposed that each teacher, tenured and non-
8 tenured alike – be paid the \$2000 retention bonus. The January 31, 2014 minutes of the L/MT
9 reflect that although the L/MT modified its proposal to provide the \$2000 to each teacher, the
10 Central Team did not approve that so, rather than lose the money, the L/MT voted to provide the
11 \$2000 to each non-tenured teacher. The vote was 5 in favor with one abstention, a teacher, with
12 the abstention being made in deference to the other two teachers on the L/MT. In addition to
13 this, an additional \$1000 was approved by the L/MT for a part time teacher. The bonus was paid
14 out to the returning teachers in the spring of 2014 thus confirming that the proposal of the L/MT
15 to pay a retention bonus, albeit to non-tenured teachers only, was acceptable to the Central Team.
16 There was no need for the Board of Trustees to approve this action.
17

18 Hand in hand with their request that the \$2,000 be granted to all teachers, the PEA, as
19 mentioned, expressed its belief to the District that bonuses had to be bargained. The question of
20 the bonus for all teachers did reach the Board of Trustees in the spring of 2014. The Board took
21 no action on the request thus tabling the matter. The Board did so based on its belief that the
22 issue of paying the retention bonus was within the purview of the L/MT based on the grant of
23 authority in the MOU, assuming approval was provided by OPI.
24

25 It must be noted that, although integral to the bargaining agreement, and although the grievance
26 procedure contains final and binding arbitration, no grievance was filed over the bonus issue and
27 the language of the MOU. Since the PEA elected to file charges, and given the provisions of
28 39-31-306(5) MCA, the Board of Personnel Appeals is thus asked to interpret not only if an
29 unfair labor practice was committed, but the meaning of the MOU as well, as related to the
30 unfair labor practice charge.
31

32 The complaint alleges three things:
33

34 Charge #1 – The Defendant has interfered with union business and has attempted to
35 coerce members and nonmembers, which does not meet the standard set forth in 39-31-
36 201, MCA and constitutes an unfair labor practice as established in 39-31-401(1) and 39-
37 31-401 (2), MCA.
38

39 Addressing that charge, no evidence is offered that the District interfered with or coerced
40 members or nonmembers, or at the least, there is no evidence of that happening. Rather, the
41 issue is whether, through the actions of the District, the same result occurred just as though there
42 were interference or coercion directly with members. In fact, from the perspective of the
43 Trustees, they followed the clear language of the MOU, and, if they had not, then the PEA could
44 have rightfully filed a complaint against them for not following that clear language. A
45 disagreement on the meaning of language does not, in this case in the view of the investigator,
46 rise to the level of interference or coercion in actual practice. Rather, it is a legitimate question
47 of interpretation, which, ideally should have been left for an arbitrator to decide.
48

49 Charge #2 – The defendant has engaged in individual bargaining. As per 39-31-305 (1)
50 MCA, the public employer is obligated to act through appropriate officials or

1 representatives of the exclusive representative to bargain collectively. This constitutes an
2 unfair labor practice as established in 39-31-401(5).
3

4 Concerning this allegation, the PEA is absolutely correct on the obligation placed on a public
5 employer, including the District. However, as with the first allegation, the District response is
6 that, based on its interpretation of the MOU, it did not bypass the exclusive representative.
7 Rather it did what the exclusive representative agreed to. It worked through the entity
8 empowered by the District and PEA to carry out the SIG program, subject to the guidelines
9 established by the OPI. Again, this is a solid defense raised by the District based on its
10 interpretation of the MOU, and, like the earlier allegation, there is no evidence the District
11 directly engaged in direct bargaining with any bargaining unit member. In fact, bargaining unit
12 members, through the L/MT were the ones recommending and approving items within their
13 purview and subject to the guidelines of the SIG grant.
14

15 Charge #3 – The Defendant has not bargained in good faith. As per 39-31-305(2), MCA,
16 the public employer is obligated to act through appropriate officials or representatives of
17 the exclusive representative to bargain collectively. This constitutes an unfair labor
18 practice as established in 39-31-401(5), MCA.
19

20 Again, the PEA is correct about the obligation placed on the District, and again, the District
21 asserts it lived up to those obligations through the plain meaning of the MOU.
22

23 Having reviewed all the information provided, and considering the valid points ably raised by the
24 parties in written and oral form, the investigator recognizes that whether the MOU is given a
25 broad encompassing interpretation as offered by the District, or a far more narrow one as offered
26 by the PEA, this case is driven, in the investigator's view, by whether or not the actions taken by
27 the L/MT were outside the authority granted to that body by the PEA and the District. If they
28 were, then the argument of the PEA should prevail as a bonus is a mandatory subject of
29 bargaining. However, if the action of the L/MT was within its authority then there was no
30 contract violation and , thus, no unfair labor practice.
31

32 To the investigator, one entity that has no stake in how the language of the MOU is interpreted is
33 the OPI. The composition of the Central Team only adds to the value to be afforded its actions.
34 However it came about, the Central Team, and the fact that the Central Team approved a bonus
35 – any bonus at all - leads the investigator to believe one or both of two things. First, at some
36 level the L/MT must have thought it had the authority to approve a retention bonus, and that per
37 the MOU a bonus of this nature was “related to the SIG guidelines that encompass labor and
38 working conditions.” Second, the Central Team, comprised entirely of OPI employees, also must
39 have believed the bonus was within the parameters of authority of the L/MT, and, perhaps even
40 more importantly, within the parameters set by SIG guidelines. To the investigator, that is
41 compelling evidence that the District did not commit an unfair labor practice but rather followed
42 the terms of the MOU.
43

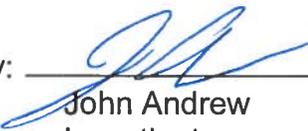
44 The investigator specifically notes that in issuing this recommended order, he does not, nor did
45 he intend to, find that the MOU encompasses the broad range of authority of the L/MT as
46 advanced by the District. Rather, this recommendation addresses the authority of the L/MT
47 regarding the retention bonus only. Now that they are aware of the differing interpretation of the
48 MOU, the District, the PEA and the L/MT can hopefully avoid future difficulties should similar
49 circumstances arise.
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1 **III. Recommended Order**

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3 It is recommended that unfair labor practice charge 15-2014 be dismissed.

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5
6 DATED this 24th day of July 2014.

7
8
9 BOARD OF PERSONNEL APPEALS

10
11 By: 
12 _____
13 John Andrew
14 Investigator

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16
17 NOTICE

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19 Pursuant to Section 39-31-405 (2) MCA, if a finding of no probable merit is made by an
20 agent of the Board a Notice of Intent to Dismiss is to be issued. The Notice of Intent to
21 Dismiss may be appealed to the Board. The appeal must be in writing and must be
22 made within 10 days of the mailing of this Notice. The appeal is to be filed with the
23 Board at P.O. Box 201503, Helena, MT 59620-1503. If an appeal is not filed the
24 decision to dismiss becomes a final order of the Board.
25
26

27
28
29 CERTIFICATE OF MAILING

30
31 I, Wendy Knutson, do hereby certify that a true and
32 correct copy of this document was mailed to the following on the 24th day of June
33 2014 postage paid and addressed as follows:
34

35
36 JEFF GREENFIELD
37 MEA MFT
38 510 NORTH 29TH
39 BILLINGS MT 59101
40

41 JEFFREY WELDON
42 ATTORNEY AT LAW
43 PO BOX 2558
44 BILLINGS MT 59103 2558
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48
49
50